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MCI, INC
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET NW, 10TH FLOOR
WASHINGTON, DC 20036

EXAMINER	
HAYES, JOHN W	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/159,404
Filing Date: September 24, 1998
Appellant(s): COMBAR ET AL.

Mr. Brian C. Oakes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 26 April 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-19 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,958,016	Chang et al	9-1999
5,825,769	O'Reilly et al	10-1998
6,240,450 B1	Sharples et al	5-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 7-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al, U.S. Patent No. 5,958,016 in view of O'Reilly et al, U.S. Patent No. 5,825,769.

As per **Claims 1-4 and 7-11**, Chang et al disclose a web/internet based reporting system for communicating information related to a customer's communication network to a client workstation via an integrated interface comprising:

- a client browser application located at the client workstation for enabling interactive web based communications with the reporting system, the client workstation identified with a customer and providing the integrated interface (Figure 2; Col. 4, lines 45-51; Col. 5, lines 10-14; Col. 6, lines 28-30; Col. 7, lines 9-13),

- at least one secure server for managing client sessions over the Internet, the secure server supporting secure socket connection enabling encrypted communication between the browser application client and the secure server (Col. 5, lines 1-6; Col. 5 line 61-Col. 6 line 3; Col. 7, lines 36-42; Col. 24, lines 37-45),

- a report manager server in communication with the at least one secure server for maintaining an inventory of reporting items associated with a customer, the reporting items comprising report data types for reports to be generated for the customer (Figure 1; Col. 10, lines 44-48; Col. 11, lines 4-8; Col. 16, lines 17-38; Col. 19, lines 6-12; Col. 21, lines 62-65; Col. 22, lines 40-50; Col. 23, lines 19-28),

- a data retrieval device for retrieving customer specific data from the customer's telecommunications network at pre-determined times (Col. 19, lines 5-12; Col. 21, lines 55-60; Col. 22, lines 34-42; Col. 23, lines 12-16),

- a requestor application enabling the customer to communicate a data report request message via the integrated interface to the report manager server, the request message being verified to ensure valid formatting and appropriate parameters for the customer specific data (Col. 20 line 39-Col. 21 line

17), the request message comprising a metadata description of particular reporting items to be retrieved, the metadata description of particular reporting items being forwarded to the retrieval device, and the retrieval device obtaining customer specific data in accordance with the metadata request (Col. 4, lines 52-55; Col. 5, lines 20-23; Col. 7, lines 5-12; Col. 11, lines 10-15; Col. 20, lines 39-46; Col. 21, lines 4-10; Col. 22, lines 32-40; Col. 23, lines 10-15),

- whereby the customer specific retrieved data of the reporting items are communicated to the client workstation and utilized to generate a completed report for presentation to the customer (Col. 15, lines 3-6; Col. 19, lines 5-12; Col. 21, lines 62-65; Col. 22, lines 42-48; Col. 23, lines 20-28).

Chang et al, however, fail to specifically disclose that the system communicates call detail information to the customer and that the requestor application allows the customer to specify the particular reporting items to be retrieved for certain predetermined times. O'Reilly et al disclose a system and method for viewing in real time or at other predetermined times call traffic of a telecommunications network wherein the system communicates call detail information to a customer (Col. 15, lines 7-25; Col. 19, lines 57-67; Col. 20, lines 53-61; Col. 22, lines 35-45, Col. 22 line 65-Col. 23 line 9). O'Reilly et al further disclose that the customer uses an application to request specific reporting items to be retrieved at certain specific times (Col. 22 line 65-Col 23 line 9; Col. 2, lines 47-56; Col. 6, lines 15-45; Col. 23, lines 54-58). It would have been obvious to one of ordinary skill in the art to modify the method of Chang et al and include the ability to provide call detail information to the customer in a format requested by the customer and at times prescribed by the customer as taught by O'Reilly et al. O'Reilly provides motivation by indicating that these features would allow the customer to monitor the operation of the network and accordingly reallocate his resources (Col. 2, lines 30-40). O'Reilly et al further indicates that these features provides the customer the ability to download information from the system in his own format and design for the reports so that a customer can monitor the operation of the network so as to be able to effect any necessary changes expeditiously (Col. 3, lines 12-25).

Chang et al further fail to specifically disclose wherein the report is dynamically determined based on one or more of customization options and user options. O'Reilly et al disclose a system and method for viewing in real time or at other predetermined times call traffic report information and further disclose

the ability to obtain a probe report based on user customization options such as specific periods of time or a specific date (Col. 5 line 57-Col. 6 line 5), or wherein the subscriber may access the TVS system to retrieve data which the subscribers can then format or design their own reports (Col. 6, lines 38-46; Col. 6 line 64-Col. 7 line 15; Col. 18 lines 55-67; Col. 22 line 65-Col. 23 line 9). Thus, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the method of Chang et al and include the ability to generate the report dynamically based on customization options or user options as taught by O'Reilly. The motivation would be to provide flexibility in the generation of reports so that the subscriber would be able to see a report that meets his/her desires.

As per **Claims 12-17**, Chang et al disclose a web/internet based reporting method for communicating information related to a customer's communication network to a client workstation via an integrated interface comprising:

- enabling interactive web based communications between a client workstation identified with a customer and one or more secure servers over a secure communications link, the web based communications including forwarding of report request messages and associated report response messages back over the secure communications link (Figure 2; Col. 4, lines 45-51; Col. 5, lines 10-14; Col. 6, lines 28-30; Col. 21, lines 50-65; Col. 22, lines 32-47, Col. 23, lines 10-27),

- accessing reporting items based on a customer entitlement information for a requested report to be generated (Figure 1; Col. 10, lines 44-48; Col. 11, lines 4-8; Col. 16, lines 17-38; Col. 19, lines 6-12; Col. 21, lines 62-65; Col. 22, lines 40-50; Col. 23, lines 19-28),

- generating a response message including a metadata description of particular reporting items to be retrieved, the metadata description of particular reporting items being forwarded to the retrieval device, and the retrieval device obtaining customer specific data in accordance with the metadata request (Col. 4, lines 52-55; Col. 5, lines 20-23; Col. 7, lines 5-12; Col. 11, lines 10-15; Col. 20, lines 39-46; Col. 21, lines 4-10; Col. 22, lines 32-40; Col. 23, lines 10-15),

- verifying the request message to ensure valid formatting and appropriate parameters for the reporting items (Col. 20 line 39-Col. 21 line 17),

- retrieving customer specific data from the customer's telecommunications network in accordance with the reporting items included in the metadata description (Col. 19, lines 5-12; Col. 21, lines 55-60; Col. 22, lines 34-42; Col. 23, lines 12-16),

- whereby the customer specific retrieved data of the reporting items are communicated to the client workstation and utilized to generate a completed report for presentation to the customer (Col. 15, lines 3-6; Col. 19, lines 5-12; Col. 21, lines 62-65; Col. 22, lines 42-48; Col. 23, lines 20-28).

Chang et al, however, fail to specifically disclose that the system communicates call detail information to the customer and that the requestor application allows the customer to specify the particular reporting items to be retrieved. O'Reilly et al disclose a system and method for viewing in real time or at other predetermined times call traffic of a telecommunications network wherein the system communicates call detail information to a customer (Col. 15, lines 7-25; Col. 19, lines 57-67; Col. 20, lines 53-61; Col. 22, lines 35-45, Col. 22 line 65-Col. 23 line 9). O'Reilly et al further disclose that the customer uses an application to request specific reporting items to be retrieved or polled at certain specific times (Col. 22 line 65-Col 23 line 9; Col. 2, lines 47-56; Col. 6, lines 15-45; Col. 23, lines 54-58). It would have been obvious to one of ordinary skill in the art to modify the method of Chang et al and include the ability to provide call detail information to the customer in a format requested by the customer and at times prescribed by the customer as taught by O'Reilly et al. O'Reilly provides motivation by indicating that these features would allow the customer to monitor the operation of the network and accordingly reallocate his resources (Col. 2, lines 30-40). O'Reilly et al further indicates that these features provides the customer the ability to download information from the system in his own format and design for the reports so that a customer can monitor the operation of the network so as to be able to effect any necessary changes expeditiously (Col. 3, lines 12-25).

Chang et al further fail to specifically disclose wherein the report is dynamically determined based on one or more of customization options and user options. O'Reilly et al disclose a system and method for viewing in real time or at other predetermined times call traffic report information and further disclose the ability to obtain a probe report based on user customization options such as specific periods of time or a specific date (Col. 5 line 57-Col. 6 line 5), or wherein the subscriber may access the TVS system to

retrieve data which the subscribers can then format or design their own reports (Col. 6, lines 38-46; Col. 6 line 64-Col. 7 line 15; Col. 18 lines 55-67; Col. 22 line 65-Col. 23 line 9). Thus, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the method of Chang et al and include the ability to generate the report dynamically based on customization options or user options as taught by O'Reilly. The motivation would be to provide flexibility in the generation of reports so that the subscriber would be able to see a report that meets his/her desires.

As per **Claim 19**, Chang et al further disclose the step of supporting encrypted communication of report request messages and report response messages between the client application and a secure server over the communications link (Col. 5, lines 1-6; Col. 5 line 61-Col. 6 line 3; Col. 7, lines 36-42; Col. 24, lines 37-45).

Claims 5-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al, U.S. Patent No. 5,958,016 and O'Reilly et al, U.S. Patent No. 5,825,769 as applied to claim 4 above, and further in view of Sharples et al, U.S. Patent No. 6,240,450 B1.

As per **Claims 5-6 and 18**, Chang et al and O'Reilly et al fail to specifically disclose a requestor applet that further enables customer scheduling of report request descriptions to be communicated from the report manager to the retrieval device at a customer specified frequency or wherein the secure web server further generates report requestor applets capable of presenting the reporting items to the customer via the report requestor application. Sharples et al disclose a network data visualization system and method for visualizing data related to traffic statistics in a communications network and teaches the use of applets (Col. 4, lines 23-37) to enable the customer to schedule the reporting of the information at a customer specified frequency (Col. 6 lines 51-Col. 7 line 30) and wherein the secure server further generates applets capable of presenting the reporting items to a customer (Col. 5, lines 45-67; Col. 8, lines 15-41). It would have been obvious to one of ordinary skill in the art to modify the methods of Chang et al and O'Reilly et al and include the use of applets to enable the customer to schedule the

reporting of the information and presenting it to the customer. Sharples et al provides motivation by indicating that this provides an effective means to enable non-technical customers to retrieve data presentation and access software at the time of data access (Col. 3, lines 1-6 and 40-50). Sharples et al also indicates that if the data relates to traffic statistics in a communications network, then the system is particularly useful for the service provider who can monitor almost in real time the success or otherwise of a particular communications service (Col. 3, lines 5-10).

(11) Response to Argument

First Issue (Claims 1-7, 11-16 and 19)

Appellant argues that neither Chang nor O'Reilly disclose or suggest a metadata description of particular reporting items. Appellant indicates that examiner cited several portions of the Chang reference to support his position which are included below.

> Several vendors also now offer a 'Web-TV' terminal device for coupling to a television set, to provide web browsing and other Internet services using a remote control and a television screen. While viewing pages using either type of terminal, the user can enter requests by clicking on text or icons or can send typed inputs to a server.... (Chang, Col. 7, lines 5-12)

Appellant asserts that this excerpt only indicates that requests can be initiated by clicking icons or sending typed inputs to a server and asserts that an icon is merely a pointer to a location in memory where a command or set of commands is located and, thus, there is no teaching of messages comprising metadata descriptions of particular reporting items. Examiner respectfully disagrees and submits that this excerpt discloses that a user having a personal computer and browser obtains various web pages of information from a network and can receive various reports relating to their services (Chang, Col. 7, lines 1-12). Chang discloses that the user can enter requests for reporting information by either clicking on text or icons, or more importantly, can send typed inputs to a server. Examiner submits that sending typed inputs to a server as disclosed by Chang is equivalent to communicating a request message requesting particular reporting items to be retrieved as recited in the claim. Examiner recognizes that Change does not specifically use the term "metadata" to describe the reporting items being requested by the user.

However, Metadata is defined as "data about data", Microsoft Computer Dictionary, Fourth Edition, Microsoft Press, 1999. Examiner submits that the teaching by Chang that the user can enter requests by clicking on text or icons or send typed inputs to a server meets the language of the claims since the text, icons or typed inputs would be data that describes the type of data desired by the user. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965 (Fed. Cir. 2003). Examiner submits that the disclosure by Change including sending typed inputs to a server to request various reports meet the definition of "metadata" as defined in the dictionary since metadata is nothing more than "data that describes data".

Appellant further cites the following excerpt from Chang and asserts that this indicates only that a user can input data for transmission via the Internet.

> The proxy server 523 transmits that page to the subscriber's terminal device 29 through the router 510 and the public packet switched data network 27. The terminal 29 presents the HTML page as a template with one or more boxes for the user to fill in with the necessary information. The subscriber inputs the requested further information on the page, and the terminal device transmits the information as an HTTP message through the Internet 27 for verification (Chang, Col. 20, lines 39-46)

Although appellant's statement is true, the preceding and subsequent lines of text (Col. 20, lines 28-38 and Col. 20 line 47-Col. 21 line 10) in Chang indicate that the subscriber is transmitting this request message in order to view service information related to their telephone number. In other words, the subscriber is not just sending input data for transmission via the Internet, but the subscriber is sending this input data for the specific purpose of requesting service information related to the subscribers telephone account which examiner submits corresponds to the claim language. Thus, examiner submits that appellant is narrowly reviewing the cited text in Chang and characterizing the teachings out of context.

Appellant further cites the following excerpt from Chang and asserts that this shows only that the user can input data for transmission via the Internet and that there is some type of verification of the data.

> The subscriber also can type in specific detailed information in fields of the service control template(s). When the subscriber completes any such input, the browser 293 in the terminal 29 transmits the input information back through the Internet 27 to the proxy server 523. If the input information is 'legal', the proxy server 523 forwards the information in appropriate form to the application server 527. (Chang, Col. 21, lines 4-10).

Again, examiner submits that appellant is performing a piece mail analysis of the cited passage in the Chang reference and is considering this passage out of context without considering the cited passages in total. Examiner asserts that the above passage indicates that the subscriber can type in specific detailed information in the fields of a template, and when completed, the system determines if the input information is legal and forwards the information to the application server. Examiner submits that this correlates to applicant's claimed recitation "said request message comprising a metadata description of particular reporting items to be retrieved, said metadata description of particular reporting items being verified and forwarded to the retrieval device" in claim 1.

Appellant further cites the following excerpt from the examiner's rejection and asserts that, once again, this excerpt shows only that the user can input data for transmission via the Internet and that there is some sort of verification that takes place.

> In response to other inputs from the subscriber, the WSMS 255 also collects service reporting information relating to switch based features. The WSMS may collect AMA records or station message detail recording (SMDR) reports. In the illustrated example, the WSMS 255 communicates through the OSN 21 with the Revenue Accounting Office (RAO) 235, to obtain information relating to a customer's billing account.

Examiner once again asserts that applicant has performed a piece mail analysis of the specific lines of text without considering this passage in conjunction with the other passages cited above. Examiner submits that this specific passage discloses that in response to user inputs, the system collects reporting information that would ultimately be forwarded to the subscriber.

In summary, examiner submits that applicant has isolated each of the above cited passages and analyzed them individually without considering the teachings of these passages in total. Examiner submits that when considered in total, Chang discloses the claim language as follows:

said request message comprising a metadata description of particular reporting items to be retrieved

While viewing pages using either type of terminal, the user can enter requests by clicking on text or icons or can send typed inputs to a server. The invention enables persons surfing the web using such common technology to access a communication network, preferably the AIN telephone network, to control their services and receive various reports relating to their services. (Chang, Col. 7, lines 1-12); and

*The present invention provides telephone service customers an easy, effective mechanism to interact with the various telephone network management systems 24, and thereby manage all of the control information that effects their telephone services and to obtain usage and billing related information regarding their telephone services (*Chang, Col. 11, lines 10-15);

*While viewing the page(s) showing the current service information on their terminal 29, the subscriber can point-and-click on hypertext links displayed on the page to modify displayed service features. The subscriber also can type in specific detailed information in fields of the service control template(s). When the subscriber completes any such input, the browser 293 in the terminal 29 transmits the input information back through the Internet 27 to the proxy server 523. If the input information is `legal,` the proxy server 523 forwards the information in appropriate form to the application server 527 (*Chang, Col. 21, lines 1-10).

said metadata description of particular reporting items being verified and forwarded to said retrieval device, said retrieval device obtaining customer service data in accordance with the metadata request

*The terminal 29 presents the HTML page as a template with one or more boxes for the user to fill in with the necessary information. The subscriber inputs the requested further information on the page, and the terminal device transmits the information as an HTTP message through the Internet for verification (*Chang, Col. 20, lines 39-46).

When the subscriber completes any such input, the browser 293 in the terminal 29 transmits the input information back through the Internet 27 to the proxy server 523. If the input information is 'legal',

the proxy server 523 forwards the information in appropriate form to the application server (Chang, Col. 21, lines 6-10);

The subscriber can access various reports regarding usage of AIN services. In response to an HTTP message requesting such a report, the application server 527 queries the WSMS 255 through the OSN 21 and the TNS 253. From its database 253 and/or by querying the reporting systems (DD and DRS) 244, 246 of the ISCP site 241 serving the subscriber, the WSMS 255 compiles the requested report data. The WSMS 255 transmits the report data through the OSN 21 and the TNS 253 to the application server 527 (Chang, Col. 22, lines 32-42).

In response to other inputs from the subscriber, the WSMS 255 also collects service reporting information related to switch based features. The WSMS may collect AMA records or station message detail recording (SMDR) reports (Chang, Col. 23, lines 10-15).

Whereby said customer specific retrieved data and said metadata description of said reporting item are communicated to said client workstation and utilized to generate a completed report for presentation to said customer.

The application server 527 also receives service related information, such as service templates containing subscriber specific information and service usage reports from the WSMS 255, formats that information as HTML web pages and transmits the pages as HTTP protocol messages through the proxy server 523 and the Internet 27 to the user terminal 29 for display (Chang, Col. 19, lines 5-12).

The WSMS 255 transmits that information back to the application server 527 through the OSN 21 and the TNS 253. The application server 527 formats the service information as an HTML web page and forwards the page to the proxy server 523 for transmission through the Internet 27 to the user's terminal device 29. (Chang, Col. 21, lines 60-65).

The WSMS 255 transmits the report data through the OSN 21 and the TNS 253 to the application server 527. The application server in turn formats the report as one or more HTML web pages and forwards the pages to the proxy server 523. The proxy server communicates via the router 510 and the Internet 27, to supply the web pages of the report to the user's terminal device 29 for storage and/or

display. The Internet-Web Link system also offers subscribers options to receive usage reports via E-mail or as File Transfer Protocol (FTP) type file transfers. (Chang, Col. 22, lines 40-50).

The WSMS 255 transmits the report data regarding switch services or the billing data from the RAO 235 through the OSN 21 and the TNS 253 to the application server 527. The application server in turn formats the report as one or more HTML web pages and forwards the pages to the proxy server 523. The proxy server communicates via the router 510 and the Internet 27, to supply the web pages of the report or account statement to the user's terminal device 29 for storage and/or display. (Change, Col. 23, lines 20-28).

Appellant further asserts that examiner's interpretation of "metadata descriptions" in incorrect since it is based solely upon a dictionary definition of "metadata". Appellant asserts that examiner erred in not also considering the meaning of metadata descriptions as set forth within the specification. Appellant asserts that the specification sets forth the meaning of "metadata descriptions" (Page 32, lines 12; page 40, page 41 and pages 73-76). Examiner notes that the specification must clearly set forth the definition explicitly and with reasonable clarity, deliberateness and precision, *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP 2111.01.

Page 32 of applicants specification states that "*Request messages received by the RM server are translated into a "metadata" format and validated by a parser object built into a report manager proxy 250, that services requests that arrive from the GUI front-end*". Examiner submits that this passage does not clearly set forth the definition of "metadata descriptions" explicitly and with reasonable clarity, deliberateness and precision. This passage seems to merely indicate that messages are translated into a "metadata" form, but provides no specific definition of "metadata" which is different than the ordinary and customary meaning of the term. "Although an applicant may be his own lexicographer... nothing in the specification defines the phrase 'speech user agent' differently from its ordinary meaning", see *In Re Thrift*, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).

Page 40 of applicant's specification states that "*At one level, these metadata descriptions function like the catalog in a relational database, describing each row of a result set returned from the middle tier*

as an ordered collection of columns". Again, examiner submits that this passage seems to merely indicate the function that a metadata description performs, but provides no specific definition of "metadata" or "metadata descriptions" which is different than the ordinary and customary meaning of the term.

Page 41 of applicant's specification states that "*The same metadata descriptions may be used to provide common data export and report printing services. When extended to describe aggregation levels of data within reporting dimensions, it can even be used for generic rollup/drilldown spreadsheets with "just-in-time" data access".* Examiner again submits that this passage seems to merely indicate the function that a metadata description performs or what they may be used for, but provides no specific definition of "metadata" or "metadata descriptions" which is different than the ordinary and customary meaning of the term.

Pages 73-76 of applicant's specification gives examples of syntax for metadata and messages in metadata format, however, examiner submits that these examples are just that, examples. They only show examples of metadata descriptions and examiner submits that the use of the term "metadata" in appellant's specification is not outside of the ordinary and customary meaning of the term "metadata". As described above, the term metadata is defined as "data about data" and appellant's examples of metadata descriptions shown in the specification are merely fields of information that describe the data to be included in a report. Thus, examiner submits that appellant's specification does not clearly set forth the definition of the term "metadata" explicitly and with reasonable clarity, deliberateness and precision which is outside the ordinary and customary meaning of the term. "Although an applicant may be his own lexicographer... nothing in the specification defines the phrase 'speech user agent' differently from its ordinary meaning", see *In Re Thrift*, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).

Furthermore, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims do not recite that the metadata descriptions are required to be in any specific format or syntax. The claims merely recite that the "request message comprises a metadata description of particular reporting items" without requiring any specific format or syntax for the request message or

metadata description. Thus, examiner submits that the above cited passages of Chang disclose the language as recited in the claims and interpreted by the examiner.

Second Issue (Claims 8-10)

Appellant argues that claim 8 sets forth that "said customer specific data information relates to unpriced traffic call detail data" and that neither Chang nor O'Reilly disclose this. Examiner submits that O'Reilly discloses that the customer specific data relates to traffic call detail data, however, does not disclose that this data is unpriced. Examiner submits, however, that the difference between traffic call detail data and unpriced traffic call detail data are only found in the non-functional descriptive material and are not functionally involved in the steps recited. The steps of requesting the data, retrieving the data and reporting the data would be performed the same regardless of the descriptive material since none of the steps explicitly interact therewith. In other words, the unpriced traffic call detail data would only mean something to a person monitoring the output. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd Pat. App. & Inter. 1987). Thus, the functional limitation of retrieving unpriced traffic call detail data does not distinguish from the prior art since this limitation is directed to the type of data being retrieved rather than the structural limitations of the invention.

Third Issue (Claims 17-18)

Appellant argues that neither Chang nor O'Reilly appear to disclose the storage of reporting items included in a prior created metadata report description much less retrieving customer-specific data for generation of a report according to the stored reporting items at the scheduled time. Examiner respectfully disagrees and notes that Chang does disclose the storage of reporting items in a prior created metadata report by indicating that "*The proxy server communicates via the router 510 and the Internet 27, to supply the web pages of the report to the user's terminal device 29 for storage and/or display. The Internet-Web Link system also offers subscribers options to receive usage reports via E-mail or as File Transfer Protocol (FTP) type file transfers (Col. 22, lines 44-49).* Examiner also submits that the O'Reilly reference discloses that the customer uses an application to request specific reporting items to be retrieved or polled at certain specific times (Col. 22 line 65-Col. 23 line 9; Col. 2, lines 47-56; Col. 6, lines 15-45; Col. 23, lines 54-58).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John W Hayes
Primary Examiner
Art Unit 3621

JWH
June 24, 2004

Conferees

James Trammell, SPE 3621

Eric Stamber, SPE 3622

WORLDCOM, INC.
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET NW
WASHINGTON, DC 20036